

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3162 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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RASHMIKANT A ANTANI

Versus

STATE OF GUJARAT

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Appearance:

MR YS MANKAD for Petitioner

Ms MANISHA LAVKUMAR, AGP for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, an Ex-army officer has prayed for a writ of mandamus directing the respondent to implement the directions contained in the judgment and order dated 11.1.1978 of this Court in Special Civil Application No. 383 of 1974 and to pass necessary orders for fixing the petitioner's pay at an appropriate stage, the details of which are referred to hereinafter.

2. To appreciate the grievance of the petitioner, it is necessary to set out a few facts leading to filing of this petition, as averred by the petitioner.

2.1 The petitioner joined for pre-emergency training in Army on 19.4.1963 and successfully passed the training for Emergency Commissioned Officer (ECO) on 6.10.1963. After rendering active service particularly in the war with China on the NEFA border during which period the petitioner also came to be promoted as Captain, the petitioner was demobilized and released from Army on 1.6.1968. At that time, the petitioner was getting the pay of Rs.670/- + allowance = Rs.860/-. In December, 1968 and January, 1969, the petitioner appeared in Gujarat Public Service Commission (GPSC) examination for the post of Deputy Collector/Dy.S.P. and the equivalent post and passed the said examination. The GPSC informed the petitioner that the examination for the post of Deputy Collector and equivalent post was treated as cancelled, but recruitment to the post of Dy.S.P. and DILRs could be made and the petitioner may be taken to have applied for the said posts. The petitioner consented and by Government Resolution dated 14.5.1970 the petitioner was appointed to the post of Dy.S.P. in Class-I service in the scale of Rs.500-1100. By letter dated 29.7.1970, the Inspector General of Police asked the petitioner to join the training for the post for which the petitioner was selected but it is the case of the petitioner that the petitioner received the letter very late when the training was about to be over. Hence, the petitioner requested the Inspector General of Police to shorten the petitioner's training period. The representation was not accepted and ultimately in January, 1971 the petitioner's appointment for the post of Dy.S.P. came to be cancelled.

2.2 Almost simultaneously the petitioner's case came to be considered for appointment to the post of Secretary, District Soldiers, Sailors and Airmen Board (hereinafter referred to as "DSSA Board"). However, the post was at that time in class III service. By Government Resolution dated 27.1.1971 that post came to be upgraded as class II post in the pay scale of Rs.350-850. By another Government Resolution of even date, the petitioner came to be appointed to the post of Secretary, DSSA Board which was a class II post in the pay-scale of Rs.350-850. The petitioner made representations to the authorities requesting for fixation of the petitioner's pay in the aforesaid scale atleast at Rs.670/- which was the basic pay which the

petitioner was last drawing before being released from the Army. This was sought on the basis of the Government Resolution dated 3.8.1966 (Annexure "C"). However, on 15.2.1974, the authorities rejected the petitioner's representation on the ground that the post held by the petitioner was not a reserved post so as to get the benefit of the aforesaid Government Resolution dated 3.8.1966. The petitioner thereupon filed Special Civil Application No. 383/74. The petition came to be allowed by the judgment and order dated 11.1.1978. The operative order reads as under :-

" The result is that the petition is allowed and the Government's turning down of petitioner's request in the form of their letters annexure "Q" are set aside and the Government-respondent no. 1 is directed to fix petitioner's pay in accordance with clause (b) of paragraph 6 of the Government resolution-annexure "D". Rule is accordingly made absolute with costs."

2.3 Pursuant to the aforesaid direction, the State Government issued Resolution dated 31.5.1978 (Annexure "J" Pg. 53) directing that the initial pay of the petitioner on the post of Secretary, DSSA Board (which was by then renamed as 'District Sainik Board'), Baroda shall be fixed in accordance with clause (b) of paragraph 6 of the Government Resolution dated 3.8.1966 from the date of his appointment and he shall be paid the difference of pay and allowances due to him accordingly. According to the petitioner, the said Government Resolution was merely a lip-service to the writ of this Court as the Government did not fix the pay as per the petitioner's representation, which was required to be done at the stage of Rs.670/- with effect from 1.6.1971 in the scale of Rs.350-850. Ultimately, the petitioner filed the present petition for a writ of mandamus to direct the respondent to fix the petitioner's pay at Rs.350/- as on 6.10.1963 and at Rs.675/- as on 1.6.1971 and as revised from time to time together with interest thereon at the rate of 12% from the date of the judgment of this Court i.e. 11.1.1978.

3. During pendency of the petition, the State Government issued Resolution dated 21.11.1990 (Annexure "Y" Pg. 76) after setting out the history of the previous litigation and the direction given by this Court as well as para 6(b) of the Government Resolution dated 3.8.1966. The Government Resolution dated 21.11.1990 stated as under :-

"Shri Antani had joined the commissioned service on 6.10.1963. From 6.10.1963 to 25.9.1964, there was no vacant post of Secretary DSS & A Board available. The post which can be made available notionally to Shri Antani fell vacant only on 26.9.1964. Therefore in terms of clauses (b) of para 6 of Government Resolution, General Administration Department dated 3.8.1966 referred to above, it can be said that after 6.10.1963, Shri Antani would have been appointed on 26.9.64. On the said date the post of Secretary was a Class IIIrd post and carried pay scale of 130-5-160-8-200. This scale was revised to Rs.200-10-250-EB-12-310 with effect from 1.6.1967. The scale was further revised to 350-20-450-EB-25-525-30-625-EB-35-850. Hence the pay of Shri Antani is required to be fixed as under :-

1. From 26.9.64 to 31.5.67 Rs. 130 to 200
2. From 1.6.67 to 31.5.71 Rs. 200 to 310
3. From 1.6.71 onwards Rs. 350 to Rs.650.

Accordingly, the initial pay of Shri Antani is fixed as under :-

1. Scale of pay Rs.130-5-160-8-200

From 26.9.64 Rs.130/- e  
" 26.9.65 Rs.135/- f Under normal  
" 26.9.66 Rs.140/- f rules of  
to 31.5.67 b BCSRs.

2. Scale of pay Rs.200-10-250-EB-12-310 as revised under ROP Rules.

- (i) From 1.6.1967 to 25.9.1967  
as per details given in  
the Annexure B Rs.200/-
- (ii) From 26.7.67 Rs.210/-
- (iii) From 26.9.68 Rs.220/-
- (iv) From 26.9.69 Rs.230/-
- (v) From 26.9.70 to 31.5.1971 Rs.240/-

3. Scale of pay of the upgraded post  
Rs.350-20-450-EB-25-525-30-625-EB-35-850.

(i) From 1.6.1971 to 31.5.72 Rs.350/-  
Under normal Rules of BCSRs.

(ii) From 1.6.72 to 31.12.72 Rs.370/-

4. Scale of pay of  
Rs.650-30-740-35-810-EB-35-880-40-1000-EB-1200 as  
revised under ROP Rules 1975.

From 1.1.1973 to 31.5.1973 Rs.650/-

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The petitioner, therefore, sought leave of this Court to challenge the aforesaid Government Resolution and the leave was accordingly granted.

4. At the hearing of this petition, Mr YS Mankad, learned counsel for the petitioner has submitted that the State Government has not carried out the directions given by this Court but an absolutely erroneous interpretation has been placed on the Government Resolution dated 3.8.1966 and the petitioner is not given any benefit whatsoever. As per the impugned Resolution dated 21.11.1980, the petitioner's pay as on 1.6.1971 is fixed at Rs.350/- which was already granted to the petitioner on the date of his appointment i.e. 27.1.1971. Mr Mankad has submitted that the object of issuing the Resolution was to rehabilitate the Emergency Commissioned Officers after their release from the Armed Forces. Such officers had missed opportunities of entering into the civil services and, therefore, the Government issued the aforesaid Resolution for conferring certain benefits to the demobilized personnel who had volunteered to serve the country in the period of crisis. All these officers had acquired knowledge and experience of man management, discipline, leadership and initiative all of which are valuable qualities which would render the officers as a class specially qualified to occupy responsible positions on the civil administration. Mr Mankad has, therefore, submitted that when the petitioner had admittedly rendered services for 5 years as an Emergency Commissioned Officer with effect from 6.10.1963 till 31.5.1968, the benefit of that service and experience could not have been lost on the petitioner by pendantic

interpretation of the Government Resolution which was really meant to benefit the Ex-emergency Commissioned Officers.

5. On the other hand, Ms Manisha Lavkumar, learned AGP for the respondent has submitted that since the petitioner's pay was required to be fixed in accordance with clause (b) of para 6 of the Government Resolution dated 3.8.1966, all that was required to be done was that the petitioner was required to be considered as having been appointed as Secretary of DSSA Board on 6.10.1963. On that date the post was in Class III service in the pay scale of Rs.130-200 which scale was revised to Rs.200-310 for the period from 1.6.1967 to 31.5.1971 and it was only with effect from 1.6.1971 that the pay scale was revised to Rs.350-650. It was, therefore, submitted that the pay fixation at Rs.350/- with effect from 1.6.1971 was in order and there was no disobedience of the directions of this Court or non-compliance with para 6(b) of the Government Resolution dated 3.8.1966.

6. Before dealing with the rival contentions, it is necessary to set out the preamble of the Government Resolution dated 3.8.1966 which ran as under :-

"The question of providing suitable employment opportunities on release from the Armed Forces, to those who are commissioned in the Armed Forces on a temporary basis during the present emergency after 1st November, 1962 and as a result missed opportunities for entry into civil services was under consideration. The Government considers that the rehabilitation of those demobilized personnel who had volunteered to serve the country in a period of crisis is a problem that the nation as a whole has to face in a deliberate and constructive manner. During their service in the Armed Forces, these officers acquired knowledge and experience of man management, discipline, leadership and initiative all of which are valuable qualities which would render the officers as a class, specially qualified to occupy responsible position on the civil administration."

The relevant para 6 of the said Government Resolution is also required to be set out verbatim :-

"6. Seniority and Pay :

Seniority and pay of those candidates who are appointed against reserved vacancies in State Service, should be determined on the assumption that they entered service/post at the first opportunity they had after joining for pre-commissioned training/and on the following principles :-

- (a) For the purposes of fixation of pay and seniority a candidate appointed to a service/post recruitment to which is normally made by competitive examination shall be treated as belonging to the year in which he would have been appointed to that service/post at his first possible attempt after the date of joining pre-commissioned training.
- (b) For the purpose of fixation of pay and seniority, a candidate appointed to a service/post recruitment to which is normally made otherwise than by competitive examination, shall be treated as belonging to the year in which he would have been appointed after the date of his joining Commissioned Service."

The literary interpretation of the said Government Resolution as adopted in the impugned Resolution dated 21.11.1990 ignores the very object of the resolution which was pointed out in unmistakable terms that the Government considered that the knowledge and experience of manmanagement, discipline, leadership and initiative acquired by the emergency Commissioned Officers are very valuable qualities which rendered the officers as a class, specially qualified to occupy responsible positions in the civil administration. Keeping this thrust of the resolution in mind, it is obvious that for the services rendered by the petitioner as an Emergency Commissioned Officer between 6.10.1963 and 31.5.1968, the petitioner was entitled to get the said experience reflected in fixation of his pay on the post of Secretary, DSS Board, but the learned AGP would still contend that there was no other way of fixing the petitioner's pay but to fix it at Rs.130/- as on 6.10.1963 and as a necessary and logical corollary the petitioner's pay could not be fixed at any stage higher than Rs.350/with effect from 1.6.1971.

7. At this stage, it would be useful to refer to some settled principles for interpretation of statutes

though the Government Resolution is not to be raised to the pedestal of a statute. Those principles will nevertheless be available for having a meaningful and purposeful interpretation of the Government Resolution dated 3.11.1966. In Directorate of Enforcement vs. Deepak Mahajan, AIR 1994 SC 1775 = (1994) 3 SCC 440, Their Lordships of the Supreme Court observed that every law is designed to further the ends of justice but not to frustrate on the mere technicalities. Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute. Otherwise, a bare mechanical interpretation of the words and application of the object will render the legislature inane. In given circumstances, it is permissible for courts to have functional approach and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

Similarly, in Rattan Chand Hira Chand v. Askar Nawaz Jung, (1991) 3 SCC 67, Their Lordships of the Supreme Court observed that the legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.

8. Adopting the meaningful and purposeful construction of the aforesaid class 6(b) of the Government Resolution dated 3.11.1966 read in light of



the preamble to the said Government Resolution, it is obvious that the petitioner was required to be given the benefit of his experience as an Ex-emergency Commissioned Officer atleast for the period from 6.10.1963 till 31.5.1968. Admittedly, the very appointment order dated 27.1.1971 mentioned that the petitioner was appointed in the post of Secretary, DSSA Board in the scale of Rs.350-20-450-EB-25-525-30-675-EB-35-850. Hence, giving the petitioner the benefit of five increments for the aforesaid services rendered as the Emergency Commissioned Officer was the minimum that was expected by the Governemnt while fixing the petitioner's pay. In this view of the matter, since the first five increments are of Rs.20/-, the petitioner would be entitled to get the pay fixed at the stage of Rs.450/-. Accordingly, the petitioner's pay would be required to be fixed at Rs.450/- as on 27.1.1971 and the consequential pay fixation would be required to be done till the petitioner continued in Government service. It is a sad commentary on the state of the administration that the petitioner ultimately resigned from service on 23.12.1975. Mr Mankad states that the petitioner had to resign in disgust on account of the manner in which the petitioner was being dealt with. Be that as it may, this petition deserves to be allowed.

9. Of course, the original contention of Mr Mankad for the petitioner was that the petitioner's pay ought to have been fixed at Rs.350/- as on 6.10.1963 in the scale of Rs.350-850 and it should be worked out as on the date of the petitioner's appointment on 27.1.1971. It is not possible to accept this contention because admittedly the post of Secretary of DSS Board was not in the scale of Rs.350-850 as on 6.10.1963. In fact, it was in a much lower scale in Class-III service and it was only in January, 1971 by Government Resolution dated 27.1.1971 that the post came to be upgraded to Class-II service in the scale of Rs.350-850. The relief as prayed for by the petitioner cannot, therefore, be granted.

10. In view of the above discussion, the petition is partly allowed. The respondent is directed to fix the petitioner's pay at the stage of Rs.450/- in the scale of Rs.350-20-450-EB-25-525-30-675-EB-35-850 with effect from 27.1.1971 and to further fix the petitioner's pay in the scale of Rs.650-30-35-810-.....1200 with effect from 1.1.1973 and to pay the petitioner all the arrears of pay and allowances on that basis from 27.1.1971 till the date of petitioner's resignation on 23.12.1975. Looking to the fact that the petitioner was denied the said benefit even after his success in the first petition which was

allowed on 11.1.1978, the respondent shall further pay interest at 12% per annum from 11.1.1978 till the date of payment.

The directions contained in this judgement shall be complied with within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

11. Rule is made absolute. There shall be no order as to costs since the petitioner is already awarded interest on the amount of arrears of difference of salary and also because the learned counsel for the petitioner does not press for the same.

The office to send writ to the respondent expeditiously.

(M.S. Shah, J.)

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